

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

No. Cr. S-04-139 DFL

Plaintiff/Respondent,

Memorandum of Opinion  
and Order

v.

SERGIO ALAN FERNANDEZ,

Defendant/Petitioner.

Sergio Alan Fernandez filed a motion, pursuant to 28 U.S.C. § 2255, to correct, vacate, or set aside his sentence based upon allegations of (1) ineffective assistance of counsel, (2) his "actual innocence," (3) an illegal search, and (4) various sentencing errors. Although Fernandez expressly waived his right to file a § 2255 motion in his plea agreement, the court considers the claim that counsel failed to inform him of the actual consequences of his plea. See Washington v. Lampert, 422 F.3d 864, 871 (9th Cir. 2005) (holding unenforceable a plea agreement that waives the right to challenge the voluntariness of the plea). Given evidence that "the court meticulously

1 explained the rights that [defendant] was agreeing to waive . .  
2 . and that [defendant] understood the nature of the waiver," the  
3 court holds the plea to be voluntary. Id. at 873. The valid  
4 waiver bars Fernandez's additional arguments concerning his  
5 innocence, the search, and sentence. See United States v.  
6 Cortez-Arias, 425 F.3d 547, 548 (9th Cir. 2005) (applying waiver  
7 of appeal rights to Booker challenges); United States v. Abarca,  
8 985 F.2d 1012, 1014 (9th Cir. 1993) (holding defendant's knowing  
9 and voluntary waiver § 2255 collateral review to be  
10 enforceable). Therefore, the motion is DENIED.  
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13 IT IS SO ORDERED.

14 Dated: June 18, 2007  
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17 /s/ David F. Levi\_\_\_\_\_  
18 DAVID F. LEVI  
19 United States District Judge  
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